

PRELIMINARY COMMENTS: FLORENCE COPPER PROJECT DRAFT AREA PERMIT
CLASS III IN-SITU PRODUCTION OF COPPER; PERMIT NO. R9UIC-AZ3-FY19-1

December 13, 2021

On November 19, 2021, the Environmental Protection Agency (EPA) provided the Gila River Indian Community (GRIC or the Community) with a pre-issuance copy of the Florence Copper, Inc. (FCI) Project Draft Area Permit, Class III In-Situ Production of Copper; Permit No. R9UIC-AZ3-FY19-1 (Draft Permit). Set forth below are initial comments from the Community based upon a preliminary review of the pre-issuance Draft Permit. The comments herein do not represent the official comments of the Community, but instead, are being submitted to provide EPA with areas of concern and requested permit additions and/or modifications for EPA to include in the Draft Permit that EPA will issue for public review and comment. The Community reserves the right to provide additional comments on the Draft Permit during the public comment period.

The mining operations to be authorized under any EPA Permit to FCI will occur in close proximity to the Community's Reservation Lands, which the United States holds in trust for the benefit of the Community. Without appropriate protections, there is the potential for FCI's operations to adversely affect Community cultural resources and groundwater quality.

EPA must include binding and legally enforceable provisions in any FCI Permit to ensure protections of groundwater quality and in the Programmatic Agreement and its Historic Properties Treatment Plan (HPTP) under Section 106 of the National Historic Preservation Act (Section 106 PA) to protect cultural resources. There are a number of factors that justify the need for such protections here; notably: (i) the extended duration of the permit (22 years); (ii) the proximity of the mining activities to Community Tribal lands; (iii) the presence of federally protected cultural resources at the Project site; (iv) the size of the Project operations (approximately 500 acres on a 1,500 site); and (v) the relatively limited use of and experience with this mining technique.

1. The Section 106 PA Must Include Protections for and Community Access to the Escalante Ruins and the C. Poston Butte Ball Court Site

EPA has determined that the Project could adversely affect up to 28 historic properties, including the Escalante Ruins and the C. Poston Butte Ball Court site, both Traditional Cultural Properties (TCP). The Escalante Ruin platform mound is located on State land leased to FCI and is currently surrounded by a fence, but the site is in need of stabilization. The C. Poston Butte Ball Court is located on land that FCI recently acquired and is currently unfenced. These sites are closely associated with the cultural practices and beliefs rooted in the Community's history and are important in maintaining the cultural identity of the Community.

With respect to these sites, the Community requests that EPA include the following protections and measures in the Section 106 PA:

- A Community-approved Escalante Ruins Stabilization Plan. The current draft version of the Section 106 PA commits to stabilize the Escalante Ruins site. While the Community fully supports this commitment, to ensure adequate protections and stabilization, the EPA must incorporate a Community-approved Escalante Ruins Stabilization Plan into the

Section 106 PA prior to issuing the FCI Permit. With the Stabilization Plan included in the Section 106 PA, there will be certainty (and binding commitments) with respect to the specific stabilization and protection measures that FCI will undertake at the Escalante Ruins site.

- Fencing the C. Poston Butte Ball Court. The current draft version of the Section 106 PA states that FCI will seek to work with the private property owner to secure agreement to fence the Ball Court site. FCI, however, has recently acquired the land on which the C. Poston Butte Ball Court is site located, so a fence can now be constructed without any third-party landowner approval. The Section 106 PA should include a binding obligation for FCI to construct a fence around the Ball Court that meets agreed-upon general design and location parameters (that are expressly included in the Section 106 PA).
- Access to Escalante Ruins and C. Poston Butte Ball Court. As noted above, TCPs at the Project site have great historical and cultural significance to the Community. As such, the Section 106 PA should include a binding obligation for FCI to provide Community members with access, on reasonable terms to be detailed in the Section 106 PA, to the Escalante Ruins and C. Poston Butte Ball Court for educational, ceremonial, and other Community purposes.

2. The EPA UIC Permit Must Provide Measures to Ensure the Protection of Groundwater from Project Operations.

Despite the measures included in the Draft Permit, the Community remains concerned that the magnitude and nature of the in-situ mining operations could adversely affect groundwater quality at and in the vicinity of the Project site (where Community lands are located). Based upon these identical concerns with the Pilot Project, FCI committed to (and has been abiding by) certain information sharing obligations with the Community. These information sharing obligations, enumerated below, should be incorporated into the Permit as enforceable conditions:

- a. FCI shall provide GRIC's Office of General Counsel with the following information or documentation within 48 hours of FCI submittal or receipt:
 - (i) All notices, reports, sampling results, hydro-geologic data, and any other information that FCI or its agents or representatives submit to EPA and/or the Arizona Department of Environmental Quality (ADEQ) in connection with its state or federal permits;
 - (ii) Notice of any amendments, modifications, or other changes to the Permit or the ADEQ Aquifer Protection Permit (APP); and
 - (iii) Notice of any event where monitoring or other information indicates noncompliance with a permit condition associated with or that may result in fluid migration into or between underground sources of drinking water that is required to be reported under the Permit or APP.

- b. Within seven (7) days of receiving a request by GRIC (or a different time period mutually agreed-upon by the parties), FCI shall provide GRIC, including its agents and representatives, with:
 - (i) Access to the Project site;
 - (ii) A reasonable opportunity to inspect the Project operations;
 - (iii) Access to view and discuss with FCI and their retained consultants Supervisory Control and Data Acquisition (SCADA) presentations of operational data and geophysical imaging of the subsurface data; and
 - (iv) A reasonable opportunity to meet with FCI's staff and professionals to address any questions or concerns resulting from GRIC's inspection of the mining operations and data and analyses.
- c. FCI shall provide a written response to GRIC within a reasonable period of time, not to exceed fourteen (14) days, unless the parties agree to a different time period, to any concerns that GRIC raises in writing to FCI.

In addition, FCI shall participate in an annual meeting (if requested by GRIC) at the Project site within 60 days of FCI filing its fourth quarter Quarterly Report (as required by Draft Permit Part II Section G (3)) to address, at a minimum, Project operations during the prior year, any violations of Project permits or laws, and any environmental incidents. As part of such meeting, FCI shall provide GRIC with the opportunity to view and inspect Project operations and monitoring activities.

3. Other Considerations

In addition to the above specific protections regarding cultural resources and groundwater quality, the Community has identified the following additional issues that EPA should address in the permit and/or Section 106 PA.

- State Land Portion of Project. A portion of the Project will be located on State of Arizona lands that are currently leased to FCI. The Community understands that the lease with the State terminates prior to the expiration of the Permit. The Permit is silent on the circumstances that would occur if the State fails to renew this lease. Important considerations included, but are not limited to, whether the mining operation and/or required monitoring can safely continue, and whether FCI can fulfill its obligations under the Permit without access to those lands, including its obligations under the Section 106 PA to protect the Escalante Ruins located on these leased lands. EPA must include provisions to ensure that FCI can continue its mining operations and monitoring in a safe manner and effective manner if access to the State lands is lost.
- Potential State of Arizona Primacy over Safe Drinking Water Act. The state of Arizona has applied for primacy under the Safe Drinking Water Act (SDWA), which if granted, could result in the State taking over FCI's Permit. While EPA, as a federal agency, has the

obligation to protect Community lands and resources, the state of Arizona lacks such trust obligations. It is imperative that EPA continue to fulfill its trust obligations and ensure that EPA retains enforcement authority over the Permit and that mechanisms remain in place to ensure that the Section 106 PA conditions and obligations remain binding on FCI if ADEQ obtains primacy.

- Need for Independent Inspection and/or Monitoring. As written, the Draft Permit relies on FCI-generated data in order to monitor the operations of this very large and relatively novel mining operation. The Community urges EPA to consider undertaking its own (or requiring a third party to undertake) periodic inspection and monitoring to ensure that Project operations remain safe, fluids remain contained, and FCI's data and information is accurate.